

ANNUAL REPORT
OF THE
PROBATE CODE STUDY COMMISSION



Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204

October, 2011

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2011

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**Anne Haley
Attorney for the Commission**

**Jessica Harmon
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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES

IC 2-5-16-12 directs the Commission to do the following:

- "...study and recommend to the General Assembly needed changes in the following:
- (1) The probate code (IC 29-1).
 - (2) The trust code (IC 30-4).
 - (3) Other statutes affecting the administration of a decedent's estate, guardianships, probate jurisdiction, trusts, or fiduciaries."

For the 2011 interim, the Legislative Council assigned to the Commission certain issues related to payment of Medicaid claims in accordance with SECTION 22 of SEA 331-2011.

II. INTRODUCTION AND REASONS FOR STUDY

In addition to the charge in IC 2-5-16-12, the Legislative Council assigned the following additional study topic to the Commission, which was contained in SECTION 22 of SEA 331-2011:

- "How the probate code should be amended to permit the sale of real estate located in Indiana to satisfy a claim by:
- (1) the office of Medicaid Policy and Planning;
 - (2) the United States;
 - (3) the state; or
 - (4) a subdivision of the state;
- against a decedent regardless of whether letters testamentary or of administration are issued within five months of the decedent's death."

The Commission also studied issues referred to the Commission by the Probate, Trust, and Real Property Section of the Indiana State Bar Association.

III. SUMMARY OF WORK PROGRAM

The Commission met one (1) time during the interim session on October 12, 2011. The Commission heard testimony on the following preliminary drafts:

- (1) PD 3124: Payment of Medicaid claims.
- (2) PD 3125: Payment of Medicaid claims.
- (3) PD 3126: Unauthorized practice of law.
- (4) PD 3142: Various estate planning matters.

The preliminary drafts can be accessed from the General Assembly Homepage at <http://www.ai.org/legislative/>

IV. SUMMARY OF TESTIMONY

Recovery of Medicaid Claims from the Sale of Real Property

The Probate, Trust, and Real Property Section of the Indiana State Bar Association presented a legislative proposal to extend the deadline to nine months for issuing letters testamentary or of administration under IC 29-1-7-15.1 after which Medicaid claims could not be recovered from the sale of decedent's real property.

Representatives of the Family and Social Services Administration (FSSA) said that the FSSA would suggest postponing legislation limiting Medicaid claim recovery until the court decides the pending appeal filed by the Office of the Attorney General (OAG) in which the OAG argues that the IC 29-1-7-15.1 does not apply to Medicaid claims.

A representative of the Indiana Land Title Association spoke in favor of a time limitation on Medicaid claims to prevent the clouding of title.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Commission did not make any findings of fact.

The Commission made the following recommendations:

- (1) The Commission voted 13-0 in favor of recommending to the General Assembly that no action be taken on limiting the recovery of Medicaid claims out of real property proceeds until the litigation is resolved.
- (2) The Commission voted 12 to 1 in favor of recommending repeal of the Indiana inheritance tax.
- (3) The Commission voted 13 to 0 in favor of a recommendation to increase the Indiana inheritance tax exemption to \$50,000 for a Class B beneficiary and to \$25,000 for Class C beneficiary.

The Commission recommended the following PDs for adoption by the General Assembly:

- (1) PD 3142 As amended, 13 yes votes, 0 no votes, adopted. Summary of PD 3142 as amended:

"Specifies that an individual holding a beneficial or ownership interests in an entity is considered the transferee when a transferor makes a transfer subject to the inheritance tax to the entity. Provides that the individual is liable for the same percentage of the inheritance tax as the individual's percentage of beneficial or ownership interest in the entity. Provides that reasonable funeral expenses have priority over claims to recover supplemental assistance for the aged and Medicaid from a recipient's estate. (Current law provides that only limited amounts of the funeral expenses have priority over the recovery claim.) Eliminates authority to file a recovery claim against the estate of the recipient's spouse. Specifies that for purposes of the Medicaid recovery statute costs of administration include taxes, penalties, and interest paid by the estate. Eliminates rules of will construction that only applied to decedents dying in 2010. Authorizes foreign wills to be probated after the expiration of the probate deadlines for the same limited purposes that Indiana wills may be probated after the deadlines. Provides that when an estate's resources are insufficient to pay all claims the amount given priority for reasonable funeral expenses is not subject to any reductions for various benefits received by the decedent. Provides that costs of administration include the fee of a surrogate attorney for purposes of determining the priority of claims when an estate's resources are insufficient to pay all claims. Eliminates the requirement that a declaration designating a standby guardian include the Social Security number of a child or protected person. Specifies that a standby guardian has all of the powers granted by the guardianship statute. Provides that amendments to the trust code apply to trusts created prior to the effective date of the amendment unless certain adverse events would occur because of the application of the amendment. Provides that amendments to the transfer on death statute apply to transfer on death transfers created before the effective date of the amendment. Repeals rules of trust construction that only applied to decedents dying in 2010."

(2) PD 3126 11 yes votes, 2 no votes, adopted. Summary of PD 3126:

"Provides that the practice of law by a person who is not an attorney is considered racketeering activity for purposes of the law concerning racketeer influenced and corrupt organizations."

WITNESS LIST

Dawn Hetzel, Legislative Services, Family and Social Services Administration

Charlie Hiltunen, Indiana Land Title Association

Sarah Jagger, Office of Medicaid Policy and Planning, Family and Social Services
Administration

Jeff Kolb, Probate, Trust, and Real Property Section of the Indiana State Bar Association